

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 99-31332

GAP ENTERPRISES, INC.  
d/b/a CUMBERLAND GAP CONVENTION CENTER  
d/b/a CUMBERLAND GAP INN  
d/b/a SHILLALAH VILLAGE  
d/b/a YE OLDE TEA & COFFEE SHOPPE

Debtor

**MEMORANDUM ON DEBTOR'S  
MOTION TO ALTER OR AMEND APRIL 10, 2000 ORDER**

**APPEARANCES:** McGEHEE & NEWTON  
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Attorneys for Clyde Moore and Maureen Moore

**RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE**

The court has before it a Motion for Order to Alter or Amend the Order Allowing Claim of Clyde Moore filed April 18, 2000, by the Debtor, Gap Enterprises, Inc. By this motion, the Debtor asks the court to alter or amend its April 10, 2000 Order overruling its Objection to Claims filed December 6, 1999, as amended on December 7, 1999, objecting to the claim of Clyde Moore filed on October 4, 1999, in the amount of \$112,000.00 and to the claim of Clyde and Maureen Moore filed on October 4, 1999, in the amount of \$6,800.00. The Debtor seeks only to alter or amend the amount of Clyde Moore's allowed claim.

## I

Pursuant to the Memorandum on Debtor's Objection to Claims accompanying the court's April 10, 2000 Order overruling the Debtor's Objection to Claims, the court found that Clyde Moore, John Stanley and Chris Gibbs were partners in a restaurant business named Le Banquet, Ltd. which merged into the Debtor in 1995. The court also found, in material part, that in 1994 the partners reached an agreement for compensation; that each partner would regularly receive a fixed amount of compensation; that the level of compensation agreed to for each partner was different; and that Clyde Moore was to receive compensation of \$2,000.00 monthly under the agreement in exchange for the partnership's use of his beverage license, antiques and furnishings. In addition, the court found that the agreement provided that Clyde Moore was to receive the \$2,000.00 for every month in which either Chris Gibbs or John Stanley received the compensation owing to them; that John Stanley received every payment owing to him under the agreement from January 1995 through February 1996 when he left the business; that Chris Gibbs received payments from January 1995 through October 1999; and that Clyde Moore received only one

payment of \$1,500.00 in early 1995. Finally, the court determined that the Debtor assumed the partnership's liability owing to Clyde Moore under the compensation agreement when it merged with the partnership; that the Debtor continued the compensation agreement by using Clyde Moore's beverage license, antiques and furnishings until at least September 1999; that the Debtor itself became obligated to pay Clyde Moore under that agreement; and that Clyde Moore had an allowable claim against the Debtor under the agreement in the total amount of \$112,000.00. The court's April 10, 2000 Order allowed the claim of Clyde Moore under the agreement in the amount of \$112,000.00 as filed.

## II

Motions to alter or amend a judgment may be filed pursuant to FED. R. CIV. P. 59(e), made applicable to cases in bankruptcy by FED. R. BANKR. P. 9023. Rule 59(e) lists no specific grounds for granting a motion to amend or alter a judgment, and courts have broad discretion in ruling on such motions. See *Global Network Techs., Inc. v. Regional Airport Authority*, 122 F.3d 661, 665 (8th Cir. 1997); *McClendon v. B & H Freight Servs., Inc.*, 910 F. Supp. 364, 365 (E.D. Tenn. 1995). Motions under Rule 59(e) should be granted sparingly and are typically denied. See *McClendon*, 910 F. Supp. at 365 (citations omitted).

Motions to amend or alter a judgment are granted in four situations: (1) to correct clear errors of law; (2) to present newly discovered evidence; (3) to prevent manifest injustice; or (4) to consider an intervening change in the controlling law. See *GenCorp, Inc. v. American Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999), *reh'g denied and suggestion for reh'g en banc*

*denied*, (6th Cir. 1999). Such motions are properly granted where a court “failed to give relief on a claim on which it has found that the party is entitled to relief.” *Continental Cas. Co. v. Howard*, 775 F.2d 876, 883 (7th Cir. 1985); *In re Barker-Fowler Elec. Co.*, 141 B.R. 929, 934 (Bankr. W.D. Mich. 1992).

Denial of a motion under Rule 59(e) is appropriate if used by a party to raise arguments or issues that could have been raised before the judgment. *See Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998); *McClendon*, 910 F. Supp. at 365. Similarly, additional evidence cannot be presented with a motion to amend or alter a judgment if the evidence was available to the party before the judgment. *See GenCorp*, 178 F.3d at 834; *Global Network Techs.*, 122 F.3d at 665-66; *McClendon*, 910 F. Supp. at 365.

### III

The Debtor’s first two arguments are identical and pertain to Clyde Moore’s claim for the year 1995. It argues that “the parties had agreed that Clyde Moore would only get paid if Chris Gibbs received money” and therefore that Clyde Moore should not be allowed to claim more for 1995 than the amount that Chris Gibbs received. Specifically, the Debtor argues that Clyde Moore’s claim for 1995 should be limited to \$14,100.00 because that is the amount received by Chris Gibbs in that year.

The court, however, did not find that the compensation agreement set Chris Gibbs’s compensation as a limit of Clyde Moore’s compensation. Rather, it found that the partners agreed that Clyde Moore was to receive \$2,000.00 monthly for each month that either Chris Gibbs or

John Stanley was paid, and that they agreed to a different amount of compensation for each partner. The court found that John Stanley received each payment owing to him in 1995 in its entirety and therefore Clyde Moore is entitled to the full \$2,000.00 monthly payment for each month of 1995 regardless of the amount that Chris Gibbs received.

The Debtor also argues that the court miscalculated the amount owing to Clyde Moore. It argues that if Clyde Moore is entitled to \$2,000.00 monthly for the fifty-six and one half months from January 1995 through September 15, 1999, less the \$1,500.00 payment which he received in 1995, then his total claim would be for \$111,500.00 instead of \$112,000.00. The court acknowledges this error and will grant the Debtor's motion to the extent necessary to correct it.

Finally, the Debtor argues that "Clyde Moore's claim, as allowed, is an executory contract under 11 U.S.C.A. § 365(a) (West 1993) which the debtor may reject, thus, upon rejection the amount owing to Clyde Moore would be a pre-petition debt as opposed to an administrative expense which receives priority payments." The court need not address the merits of this argument because it raises a new issue that could have been raised before the judgment.

#### **IV**

The Debtor's Motion for Order to Alter or Amend the Order Allowing Claim of Clyde Moore filed April 18, 2000, will be granted for the limited purpose of amending the amount of Clyde Moore's claim from \$112,000.00 to \$111,500.00. An amended order superseding the court's April 10, 2000 Order will be entered.

FILED: April 27, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 99-31332

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Debtor

**AMENDED ORDER**

For the reasons stated in the Memorandum on Debtor's Objection to Claims filed on April 10, 2000, and in the Memorandum on Debtor's Motion to Alter or Amend April 10, 2000 Order filed this date, the court directs the following:

1. The Objection to Claims filed by the Debtor on December 6, 1999, as amended by an Amended Objection to Claims filed on December 7, 1999, whereby the Debtor objects to the claim of Clyde Moore filed on October 4, 1999, in the amount of \$112,000.00 and to the claim of Clyde and Maureen Moore filed on October 4, 1999, in the amount of \$6,800.00 is OVERRULED and the claims are allowed as filed except that Clyde Moore's claim is allowed in the reduced amount of \$111,500.00.

2. This Amended Order supersedes and amends the court's April 10, 2000 Order.

SO ORDERED.

ENTER: April 27, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
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Debtor

**ORDER**

For the reasons set forth in the Memorandum on Debtor's Motion to Alter or Amend April 10, 2000 Order filed this date, the court directs that the Debtor's Motion for Order to Alter or Amend the Order Allowing Claim of Clyde Moore filed on April 18, 2000, is GRANTED to the extent set forth in the Memorandum. An Amended Order will be entered.

SO ORDERED.

ENTER: April 27, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE